

Unrelated income; sale of advertising. The sale of advertising during a four-month period by the paid employees of an exempt organization, which raises funds for an exempt symphony orchestra and publishes a weekly concert program distributed free at the symphony performances over an eight-month period, is a business regularly carried on in determining unrelated income under section 512 of the Code.

Advice has been requested whether the sale of advertising in the situation described below is regularly carried on within the meaning of section 512 of the Internal Revenue Code of 1954.

The organization involved is exempt from Federal income tax under section 501(c)(3) of the Code. Its purpose is to raise funds for a symphony orchestra, also exempt under section 501(c)(3). One of the organization's activities is the publication of a weekly concert program on behalf of the symphony orchestra which is distributed at the orchestra performances. For each concert the program contains (1) sketches of guest artists and regular orchestra musicians, (2) an historical review and annotation of the concert selection, and (3) paid advertising.

The programs are prepared by paid employees and are distributed at the performances free of charge to the audiences over an eight-month period of the concert season. The organization recovers somewhat more than the total publication costs through the sale of commercial advertisements that are included in the programs. The majority of the advertisements are sold by members of the organization's full-time staff in a general solicitation campaign extending over the four-month period immediately prior to the concert season. The rates charged for the advertising are generally competitive with commercial publications.

Section 512(a)(1) of the Code provides that the term 'unrelated business taxable income' means the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less allowable deductions directly connected with conducting such trade or business.

Subject to certain here unimportant qualifications, section 513(a) of the Code defines the term 'unrelated trade or business' as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its exempt functions.

Section 1.513-1(c)(1) of the Income Tax Regulations provides in substance that to determine whether trade or business is 'regularly carried on,' one must look to the frequency and

continuity with which the activities productive of the income are conducted and the manner in which they are pursued. It further provides that specific business activities are regularly carried on if they are in these respects generally similar to comparable commercial activities of nonexempt organizations.

Section 1.513-1(c)(2)(i) of the regulations provides in part that where income producing activities are of a kind normally undertaken by a nonexempt commercial organization only on a seasonal basis, the conduct of such activities by an exempt organization during a significant portion of the season ordinarily constitutes the regular conduct of trade or business.

It is a matter of common knowledge that many nonexempt organizations make a regular practice of publishing and distributing a seasonal series of special interest publications covering only a portion of each year with a format that includes substantial amounts of advertising matter. It would not be unusual for such an organization to concentrate its efforts to sell the advertising space thus made available during similar periods of intensive activity that would frequently last for no more than three or four months of each year. Since it is likewise further apparent that the activities giving rise to the advertising income here in question do not otherwise substantially differ from the comparable commercial activities of non-exempt organizations, those activities of the subject organization are regularly carried on within the meaning of section 512 of the Code.

Compare with Rev. Rul. 75-201, below.